

December 16, 2010

Utah Division of Water Rights

Attn: Randi Tarantino, Title Specialist

RE: Water Rights 81-4810 and 81-4811 (formally 81-1004 and 81-1599, respectively)

Randi,

Per our meeting several months ago you asked for a written summary of the discussion we had regarding the above referenced water rights. There had been a question raised as to the ownership of these even after the title had been updated and a change application processed on these rights. Below is a summary of the title transactions which were in question:

1. L. Tim Weeks "conveys and warrants" to Pecan Ridge Partners, LLC, a Utah Limited Liability Company Parcels 1 & 3, (along with appurtenant water rights, since none were excluded), via that certain Warranty Deed dated October 22, 2007, and recorded October 24, 2007 as Entry Number 20070051774.

Note: Snow Jensen & Reece concluded, according to their letter to the DWR dated January 14, 2010, that Water Right Number 81-1004 was in fact, appurtenant to the property. This conclusion is not in dispute.

2. Immediately proceeding Warranty Deed Number 20070051774, a Trust Deed with Assignments of Rents records in favor of L. Tim Weeks, as Beneficiary, with full beneficial interest, from Pecan Ridge Partners, LLC, a Utah Limited Liability Company as Trustor, dated October 22, 2007, and recorded October 24, 2007 as Entry Number 20070051775. Said Trust Deed includes the full legal description of Warranty Deed 20070051774, along with other properties.

Note: As no separate conveyance document was recorded to sever the water rights from the land, they are still appurtenant at that moment.

3. L. Tim Weeks "grants, conveys and assigns" his "right, title, estate and interest" in and only to Water Right Number 81-1004, together with a portion of Water Right Number 81-1559, via Water Right Deed dated July 23, 2007, and recorded October 24, 2007, as Entry Number 20070051777.

4. L. Tim Weeks "grants, conveys and assigns" his "right, title, estate and interest" in and only to Water Right Number 81-1004, via Water Right Deed dated July 23, 2007, and recorded October 24, 2007, as Entry Number 20070051778.

Note: The effect of these two conveyances was twofold: one, they severed the water rights; and two, they assigned Mr. Weeks beneficial interest under the Trust Deed in the water rights to Pecan Ridge Partners.

As we discussed, the legal effect of Pecan Ridge being both the Trustor and the Beneficiary under the Trust Deed is to release the encumbrance of the Trust Deed as to those water rights. There is no other legal explanations for the documents that were signed and recorded in that specific order.

Because of the contemporaneous conveyance of Water Right 81-1004 by L. Tim Weeks (Beneficiary under the Trust Deed), the water rights are not appurtenant. Whether water right is an appurtenance involves question of fact and depends on particular circumstances. Cortella v. Salt Lake City 72 P.2d 630, 633 (Utah 1937). Here, the determination of the appurtenance of the water is determined by considering the parties involved in a Trust Deed and the Doctrine of Merger.

When analyzing whether a beneficiary may separate appurtenant water from land, it is necessary to understand the role of each party to the trust deed. "The trustor, trustee, and beneficiary are inextricably interconnected links in the chain of title to real property. Each has certain rights, legal or equitable, separated from the complete bundle of real property rights. Although a trustee's range of authority is severely limited, the trustee is the holder of legal title. The beneficiary holds an enforceable lien on the property. The trustor possesses the bulk of the bundle of rights." Eardley v. Greenberg, 792 P.2d 724, 728 (Ariz.,1990). Furthermore, "the trustee is generally held to have bare legal title-sufficient only to permit him to convey the property at the out of court sale. All other incidents of title remain in the trustor." Id. at 727. Here, under the Trust Deed Weeks is the beneficiary and because of the contemporaneously

recorded water rights deed, it is evident that the water was intended to be separated from the land.

For example, in Smith v. North Canyon Water Co., 52 P. 283, 285 (Utah 1898), the owner of land gave a conveyance of the land and its appurtenances, absolute on its face, which was intended to operate as a mortgage. Afterwards, by verbal agreement, he sold it to plaintiff, the conveyance being a quitclaim deed to the land and its appurtenances from the mortgagee. The court held that, as against the third party that claimed ownership, the deed operated as a conveyance of water shares owned by the mortgagor under existing state law.

The doctrine of Merger is also relevant here and is stated as follows: When a person holds two estates in property in the same right and without an intervening estate, the two estates will coalesce to one estate unless a beneficial reason exists for keeping them distinct. 4 AMERICAN LAW OF PROPERTY § 16.142 (A. Casner ed. 1952).

As we also discussed in our previous meeting, this matter has been going on for several years. Numerous bona fide third party transactions have taken place with this water as separated from the land. This water has been used as a basis for LDWA to obtaining financing from DEQ's Drinking Water Division for system expansion to the water service for the Town of Leeds.

The Parties who have by innuendo, not legal action, raised title concerns to this water have appropriate remedies available to them. Inaction by the State Engineer's office gives them rights that are not substantiated nor supported by their actions.

We would ask that these rights be updated consistent with previous action by your office to LDWA so that a Change Application can be filed to put these rights to beneficial, municipal use.

Thank you for your consideration.

Sincerely,

Roger J. Sanders